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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/239,870	01/29/1999	DAVID A MCQUEEN	26858	6638

7590 04/13/2005

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EXAMINER

LANDREM, KAMRIN R

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/239,870

Applicant(s)

MCQUEEN ET AL.

Examiner

Kamrin R. Landrem

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 8,9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Species B in the reply filed on 1/21/05 is acknowledged. The traversal is on the ground(s) that all four species fall within the scope of claims 1, 15, and 17. This is not found persuasive because, while all independent claims do read on the elected species, Applicant is required to submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. Therefore the Examiner maintains the position that the disclosed species are patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

Claims 8 and 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species A, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/21/05.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Noiles (USPN 4,676,798).

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With reference to Figure 1, Noiles discloses a prosthesis comprising a substantially rigid shell 64 for attachment to skeletal structure, the shell including a shell wall defining a shell receiving area and a terminal shell margin 70 defining a shell opening to the shell receiving area; a resiliently yieldable UHMWPE liner 12 for insertion in the shell receiving area, the liner including a liner wall having a liner inner surface defining a liner receiving area the liner wall having a terminal liner margin 22 defining a restricted liner opening to the receiving area 19; and a substantially rigid retainer ring 13 attachable to the shell to engage the terminal liner margin and inhibit deformation of the terminal liner margin. The liner extends to envelop a circumferential side apex of a femur ball 10. The inner surface is substantially spherical and the liner extends to envelop greater than a hemisphere of a femur ball. The restricted liner opening has a liner opening diameter smaller than a largest diameter of the liner receiving area (see Fig. 3). The liner comprises a plurality of expansion slits 23 positioned adjacent the terminal liner margin and extending into the liner whereby the restricted liner opening is enlargable and can be further restricted. The liner includes a snapping attachment mechanism 17 attaching the retainer ring to the shell, and the snapping attachment mechanism including a catch leg having a catch lip 78 and the shell includes a catch ledge for engaging and holding the catch lip. The catch leg includes a plurality of contraction slots 98 dividing the legs.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The disclosure of Noiles (USPN 4,960,427) also anticipates Applicant's claimed invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 571-272-4752. The examiner can normally be reached on 8:00-5:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamrin Landrem
Examiner
AU 3738

krl


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